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[Proposed] Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

<p>GARY REDWEN, INDIVIDUALLY                  AND ON BEHALF OF ALL OTHERS                  SIMILARLY SITUATED,</p> <p>Plaintiff,</p> <p>vs.</p> <p>SINO CLEAN ENERGY INC.,                  BAOWEN REN, WEN FU, ALBERT                  CHING-HWA PU, HON WAN                  CHAN, WENJIE ZHANG, ZHIXIN                  JING, AND PENG ZHOU,</p> <p>Defendants.</p>	<p>)</p> <p>)</p> <p>) No. 2:11-cv-03936 PA (SSx)</p> <p>)</p> <p>) <b>MEMORANDUM OF POINTS</b></p> <p>) <b>AND AUTHORITIES IN</b></p> <p>) <b>SUPPORT OF MOTION OF</b></p> <p>) <b>CARY FRANKEL AND</b></p> <p>) <b>STEPHEN ZIMMERMAN FOR</b></p> <p>) <b>APPOINTMENT AS LEAD</b></p> <p>) <b>PLAINTIFF AND APPROVAL</b></p> <p>) <b>OF CHOICE OF COUNSEL</b></p> <p>)</p> <p>) <u>CLASS ACTION</u></p> <p>)</p> <p>) JUDGE: Hon. Percy Anderson</p> <p>)</p> <p>) Hearing Date: August 8, 2011</p> <p>) Time: 1:30 p.m.</p> <p>) CTRM: 15- (Spring Street)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>
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**MEMORANDUM OF POINTS AND AUTHORITIES**

Cary Frankel and Stephen Zimmerman, a group of two investors with a 15-year preexisting relationship<sup>1</sup>, (“Movant”) respectfully submit this memorandum in support of his motion for an Order, pursuant to Section 21D of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”):

(1) appointing Movant as Lead Plaintiff for all persons other than defendants who purchased the securities of Sino Clean Energy, Inc. (the “Company” or “SCEI”) between April 6, 2009 and May 5, 2011, inclusive (the “Class Period”), to recover damages caused by Defendants’ violations of the federal securities laws (the “Class”); and

(2) appointing the Rosen Law Firm, P.A. as Lead Counsel for the Class.

**I. PERTINENT BACKGROUND**

On May 6, 2011, The Rosen Law Firm, P.A. commenced this action against Defendants<sup>2</sup> for claims under Sections 10(b) and 20(a) of the Exchange Act. On that same day, The Rosen Law Firm, P.A. issued a PSLRA early notice advising potential class members of, among other things, the claims alleged in this case and the 60 day deadline for class members to move this Court to be appointed as lead plaintiff. A copy of the early notice is attached as Exhibit 1 to the Declaration of Laurence M. Rosen filed herewith (“Rosen Decl.” or “Rosen Declaration”).

The complaint in the instant action (“Complaint”) alleges that SCEI, a company headquartered in China, and certain of its corporate officers violated the

<sup>1</sup> Messrs. Frankel and Zimmerman have been friends for the last fifteen years.

<sup>2</sup> “Defendants” refers to, collectively: Sino Clean Energy Inc., Baowen Ren, Wen Fu, Albert Ching-Hwa Pu, Hon Wan Chan, Wenjie Zhang, Zhixin Jing, and Peng Zhou

1 Exchange Act in connection with the Company's issuance of materially false and  
2 misleading statements about the Company's business.

3 The Complaint alleges that SCEI misrepresented its financial performance,  
4 business prospects, and financial condition to investors, citing inconsistent  
5 Chinese regulatory filings. The Complaint also alleges that SCEI improperly  
6 recognized revenue in violation of Generally Accepted Accounting Principles.  
7 Between April 25 and May 4, 2011, analyst Alfred Little issued a series of reports  
8 which substantiated on an earlier April 25, 2011 report disclosing defendants'  
9 alleged fraud, all of which caused the stock price to drop, damaging investors.

## 10 **ARGUMENT**

### 11 **II. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF**

12 The PSLRA sets forth procedures for the selection of Lead Plaintiff in class  
13 actions brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(B). The  
14 PSLRA directs courts to consider any motion to serve as Lead Plaintiff filed by  
15 class members in response to a published notice of class action by the later of (i)  
16 60 days after the date of publication, or (ii) as soon as practicable after the Court  
17 decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B)(i) and (ii).

18 The PSLRA provides a "rebuttable presumption" that the most "adequate  
19 plaintiff" to serve as Lead Plaintiff is the "person or group of persons" that:

20 (aa) has either filed the complaint or made a motion in  
21 response to a notice . . . ;

22 (bb) in the determination of the Court, has the largest financial  
23 interest in the relief sought by the class; and

24 (cc) otherwise satisfies the requirements of Rule 23 of the  
25 Federal Rules of Civil Procedure.

26 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th  
27 Cir. 2002).

1 As set forth below, Movant satisfies the above criteria, has the largest  
 2 financial interest of any movant in this litigation, and is therefore the most  
 3 adequate plaintiff and should be appointed as Lead Plaintiff.

4 **A. Movant Is Willing to Serve as Class Representative**

5 Movant has made a timely motion in response to a PSLRA early notice.  
 6 *See Rosen Decl.*, Ex. 1. Additionally, as set forth in his PSLRA certification, filed  
 7 concurrently herewith, Frankel and Zimmerman attest that they have reviewed the  
 8 complaint, adopt the allegations therein, and are willing to serve as a  
 9 representative of the class. *See Rosen Decl.* Ex. 2. Accordingly, Movant satisfies  
 10 the first requirement to serve as Lead Plaintiff for the class.

11 **B. Movant Has the Largest Financial Interest in the Action**

12 The PSLRA requires a court to adopt a rebuttable presumption that “the  
 13 most adequate plaintiff . . . is the person or group ... that . . . has the largest  
 14 financial interest in the relief sought by the class.” 15 U.S.C. § 78u-  
 15 4(a)(3)(B)(iii); *Cavanaugh*, 306 F.3d at 730. While the PSLRA does not specify  
 16 precisely how to calculate the “largest financial interest”, the movant’s  
 17 approximate losses in the subject securities is the best measure. *Richardson v.*  
 18 *TVIA*, 2007 WL 1129344 at \* 4 (N.D. Cal. Apr. 16, 2007) (citing cases).

19 Zimmerman and Frankel suffered losses of \$43,090.18 in connection with  
 20 their purchase of SCEI common stock during the Class Period. *See Rosen Decl.*,  
 21 Ex. 3 (Movant’s Loss Chart).

22 Movant is not aware of any other movant that has suffered greater losses in  
 23 SCEI stock during the Class Period. Accordingly, Movant satisfies the largest  
 24 financial interest requirement to be appointed as Lead Plaintiff for the class.

25 **C. The Movant Satisfies the Requirements of Rule 23 of the Federal**  
 26 **Rules of Civil Procedure**

1 The PSLRA further provides that, in addition to possessing the largest  
 2 financial interest in the outcome of the litigation, the Lead Plaintiff must  
 3 “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil  
 4 Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). Federal Rule of Civil  
 5 Procedure Rule 23(a) provides that a party may serve as a class representative if  
 6 the following four requirements are satisfied:

- 7 (1) the class is so numerous that joinder of all members is
- 8 impracticable,
- 9 (2) there are questions of law or fact common to the class,
- 10 (3) the claims or defenses of the representative parties are typical of
- 11 the claims or defenses of the class, and
- 12 (4) the representative parties will fairly and adequately protect the
- 13 interests of the class.

14 Fed. R. Civ. P. 23(a).

15 In making its determination that a movant satisfies the requirements of Rule  
 16 23, the Court need not raise its inquiry to the level required in ruling on a motion  
 17 for class certification – a *prima facie* showing that the Movant satisfies the  
 18 requirements of Rule 23 is sufficient. *Cavanaugh*, 306 F.3d at 730-31. At the  
 19 lead plaintiff stage, “[t]he typicality and adequacy requirements of Rule 23 are the  
 20 main focus...” and “[e]xamination of the remaining requirements [of Rule 23] are  
 21 deferred until the lead plaintiff moves for class certification.” *Richardson*, 2007  
 22 WL 1129344, at \* 4 (citing *Cavanaugh*, 306 F.3d at 730)).

23 Movant fulfills all of the pertinent requirements of Rule 23. Frankel and  
 24 Zimmerman share substantially similar questions of law and fact with the  
 25 members of the class, and their claims are typical of the members of the class.  
 26 Movant and all members of the class allege that Defendants violated the Exchange  
 27 Act by publicly disseminating false and misleading statements about SCEI and its  
 28 business. Movant, as did all of the members of the class, purchased SCEI stock at

1 prices artificially inflated due to Defendants' misrepresentations and omissions,  
 2 and was damaged thereby. These shared claims also satisfy the requirement that  
 3 the claims of the representative parties be typical of the claims of the class.

4 Thus, the close alignment of interests between Movant and other class  
 5 members, as Movant's desire to prosecute this action on behalf of the class,  
 6 provides ample reason to appoint the Movant as Lead Plaintiff.

7 **D. The Movant Will Fairly and Adequately Represent the Interests**  
 8 **of the Class and Is Not Subject to Unique Defenses**

9 The presumption in favor of appointing Movant as Lead Plaintiff may be  
 10 rebutted only upon proof "by a purported member of the plaintiffs' class" that the  
 11 presumptively most adequate plaintiff:

12 (aa) will not fairly and adequately protect the interest of the class;

13 or

14 (bb) is subject to unique defenses that render such plaintiff incap-  
 15 able of adequately representing the class.

16 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

17 Movant's ability and desire to fairly and adequately represent the class has  
 18 been discussed in Section C, above. Frankel and Zimmerman are not aware of any  
 19 unique defenses that Defendants could raise against them that would render any of  
 20 them inadequate to represent the Class. Accordingly, the Court should appoint  
 21 Movant as Lead Plaintiff for the Class.

22 **III. MOVANT'S SELECTION OF COUNSEL SHOULD BE APPROVED**

23 The PSLRA vests authority in the Lead Plaintiff to select and retain lead  
 24 counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The  
 25 Court should only interfere with the Lead Plaintiff's selection when necessary "to  
 26 protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

1 Movant has selected The Rosen Law Firm, P.A. as Lead Counsel. The  
 2 Rosen Law Firm, P.A. filed the first action and has been actively researching the  
 3 class's and Movant's claims – reviewing publicly available financial and other  
 4 documents and gathering information in support of the claims against the  
 5 Defendants. Furthermore, the Rosen Law Firm, P.A. is experienced in the area of  
 6 securities litigation and class actions, having been appointed as lead counsel in  
 7 securities class actions in this District and in numerous courts throughout the  
 8 nation. The firm has prosecuted securities fraud class actions and other complex  
 9 litigation and has obtained substantial recoveries on behalf of investors. The  
 10 resume of the Rosen Law Firm, P.A. is attached as Exhibit 4 to the Rosen  
 11 Declaration.

12 As a result of the firm's experience in litigation involving issues similar to  
 13 those raised in this action, Movant's counsel has the skill and knowledge that will  
 14 enable the firm to prosecute this action effectively and expeditiously. Thus, the  
 15 Court may be assured that by approving Movant's selection of Lead Counsel, the  
 16 members of the class will receive the best legal representation available.

#### 17 **IV. CONCLUSION**

18 For the foregoing reasons, Movant respectfully requests that the Court issue  
 19 an Order: (1) appointing Cary Frankel and Stephen Zimmerman as Lead Plaintiff  
 20 of the class; (2) approving The Rosen Law Firm, P.A. as Lead Counsel; and (3)  
 21 granting such other relief as the Court may deem to be just and proper.

22 Dated: July 5, 2011

Respectfully submitted,

23 THE ROSEN LAW FIRM, P.A.

24 /s/ Laurence Rosen, Esq.

25 Laurence M. Rosen, Esq. (SBN 219683)

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[Proposed] Lead Counsel for Plaintiff



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**CERTIFICATE OF SERVICE**

I, Laurence M. Rosen, hereby declare under penalty of perjury as follows:

I am the managing attorney of the Rosen Law Firm, P.A., with offices at 333 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. I am over the age of eighteen.

On July 5, 2011, I electronically filed the following **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF CARY FRANKEL AND STEPHEN ZIMMERMAN FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF CHOICE OF COUNSEL** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

Executed on July 5, 2011.

/s/ Laurence Rosen

Laurence M. Rosen